

Amanda L. Groves (SBN: 187216)  
[agroves@winston.com](mailto:agroves@winston.com)

Kobi K. Brinson (*Admitted pro hac vice*)  
[kbrinson@winston.com](mailto:kbrinson@winston.com)

Stacie C. Knight (*Admitted pro hac vice*)  
[sknight@winston.com](mailto:sknight@winston.com)

Winston & Strawn LLP  
333 S. Grand Avenue, 38th Floor  
Los Angeles, CA 90071  
Telephone: (213) 615-1700  
Facsimile: (213) 615-1750

Ava E. Lias-Booker (*Admitted pro hac vice*)  
[alias-booker@mcguirewoods.com](mailto:alias-booker@mcguirewoods.com)

Alicia A. Baiardo (SBN: 254228)  
[abaiardo@mcguirewoods.com](mailto:abaiardo@mcguirewoods.com)

McGuire Woods LLP  
Two Embarcadero Center  
Suite 1300  
San Francisco, CA 94111-3821  
Telephone: (415) 844-9944  
Facsimile: (415) 844-9922

Attorneys for Defendant  
WELLS FARGO BANK, N.A.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

*In re Wells Fargo Mortgage  
Discrimination Litigation*

Case No. 3:22-CV-00990-JD  
Hon. James Donato

**MOTION TO MODIFY THE  
SCHEDULING ORDER BY EXTENDING  
EXPERT REBUTTAL REPORTS BY ONE  
WEEK**

Date: February 1, 2024  
Time: 10:00 a.m.

Pursuant to Civil Local Rule 16-2(d) and Fed. R. Civ. P. 16(b)(4), Defendant Wells Fargo Bank, N.A. submits this Motion to Modify the November 16, 2023 Scheduling Order (Dkt. 166) by providing four weeks instead of three weeks for expert rebuttal reports. As set forth below, there is good cause to grant this request.

### **INTRODUCTION**

Wells Fargo seeks to extend one deadline in the current Scheduling Order in this matter: the deadline for rebuttal expert disclosure by one week from March 22, 2024 to March 29, 2024. Wells Fargo does not seek to alter any other dates, including those set for (1) completion of fact discovery; (2) completion of expert discovery; (3) class certification, summary judgment, and *Daubert* motions; (4) the pretrial conference; or (5) trial. Good cause exists to extend this one deadline, as it cannot reasonably be met considering this matter's circumstances.

### **MEMORANDUM OF LAW**

This Court enjoys “broad discretion in supervising the pretrial phase of litigation, and its decisions regarding the preclusive effect of a pretrial order ... will not be disturbed unless they evidence a clear abuse of discretion.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (internal quotation marks and citation omitted). Federal Rule of Civil Procedure 16(b)(4) enables this Court to modify a scheduling order “for good cause shown.” Rule 16(b) does not define good cause, but the Advisory Committee Notes indicate that good cause shall exist if the schedule “cannot be reasonably met despite the diligence of the party seeking the extension.” Fed. R. Civ. P. 16 Advisory Committee Notes; *Johnson*, 975 F. 2d at 609.

Good cause exists to grant this motion because recent discussions with potential rebuttal experts have revealed the likely breadth and complexity of the expert reports that will be submitted in this case. Specifically, at Plaintiffs’ request, Wells Fargo has produced over 230 fields of data for more than 2.7 million home mortgage and home equity applications. *See* Declaration of Amanda Groves (“Groves Decl.”) ¶ 5. Rebuttal experts in this case will be required to spend many hours understanding how Plaintiffs’ affirmative expert(s) applied this massive data set to their employed methodology. Then, the defense experts will need apply that understanding not only to rebut the affirmative experts’ positions but also to counter-analyze the same large data set for the rebuttal

reports. Notably, rebuttal periods longer than three weeks are not uncommon in other discrimination class actions pending before this Court, or in other complex cases pending before Your Honor specifically. *See, e.g., Nat'l Fair Hous. Alliance, Inc. v. Fed. Nat'l Mortg. Ass'n[Fannie Mae]*, No. 4:16-cv-06969 (ECF No. 125) (eight-week rebuttal period in case involving allegations that Fannie Mae failed to maintain foreclosed properties in predominantly Black and Hispanic neighborhoods to the same standard as comparable white neighborhoods); *Juarez v. Soc. Fin., Inc.*, No. 4:20-cv-03386 (ECF No. 66) (six-week rebuttal period in case involving allegations that lender discriminated against loan applicants based on their immigration status); *In re Capacitors Antitrust Litig. (No. III)*, No. 3:17-md-02801 (ECF No. 345) (Donato, J.) (eight-week rebuttal period in complex antitrust case); *In re Facebook Biometric Info. Privacy Litig.*, No. 3:15-cv-03747 (ECF No. 223) (Donato, J.) (six-week rebuttal period in case involving the monetization of Illinois Facebook users' location data).

While the exact number and type of Plaintiffs' initial expert reports are not known at this time, it is apparent from recent discussions with potential rebuttal experts that three weeks is not a reasonable amount of time to analyze all of the relevant data. Instead of waiting for a last-minute *ex parte* motion in the midst of tight expert discovery deadlines, which will burden both the Court and the parties, Wells Fargo seeks to slightly modify the scheduling order now. By requesting this modification now, Wells Fargo is upholding its obligation of diligence in seeking an extension from the Court.

Finally, the requested modification is reasonable and will not prejudice Plaintiffs in any way. When requested for consent, they cited no prejudice, and in fact will receive the same extension for their own expert rebuttal reports. Plaintiffs' only cited reason to oppose the one-week extension is that: "The Court's original scheduling order required that rebuttal expert disclosures be made within 14 days of expert disclosures, and it was plaintiffs who proposed an additional eight days for rebuttal experts when the parties discussed modifying the original schedule. We do not think another further week is warranted." *See Groves Decl.* ¶ 4. It is unclear why this impacts the current request (Defendant agreed to this proposal and it was submitted to the Court), but Plaintiffs made plain they would not consent. *Id.*

Wells Fargo only seeks to extend one future deadline that will not impact any other case deadlines. In addition, Wells Fargo's extension request is only for one additional week. Plaintiffs' opposition is unreasonable, and the Court should allow this one-week extension.

### **CONCLUSION**

For all of the foregoing reasons, Wells Fargo requests a one-week extension of the rebuttal expert disclosure deadline from March 22, 2024 to March 29, 2024.

Dated: December 28, 2023

#### **WINSTON & STRAWN LLP**

By: /s/ Amanda L. Groves  
 Amanda L. Groves  
[agroves@winston.com](mailto:agroves@winston.com)  
 333 S. Grand Avenue, 38th Floor  
 Los Angeles, CA 90071  
 Telephone: (213) 615-1700  
 Facsimile: (213) 615-1750

Kobi K. Brinson (*admitted pro hac vice*)  
[kbrinson@winston.com](mailto:kbrinson@winston.com)  
 Stacie C. Knight (*admitted pro hac vice*)  
[sknight@winston.com](mailto:sknight@winston.com)  
 300 South Tryon Street, 16th Floor  
 Charlotte, NC 28202  
 Telephone: (704) 350-7700  
 Facsimile: (704) 350-7800

#### **MCGUIREWOODS LLP**

By: /s/ Ava E. Lias-Booker  
 Ava E. Lias-Booker (*admitted pro hac vice*)  
[alias-booker@mcguirewoods.com](mailto:alias-booker@mcguirewoods.com)  
 Alicia A. Baiardo  
[abaiardo@mcguirewoods.com](mailto:abaiardo@mcguirewoods.com)  
 Jasmine K. Gardner (*admitted pro hac vice*)  
[jgardner@mcguirewoods.com](mailto:jgardner@mcguirewoods.com)  
 Two Embarcadero Center, Suite 1300  
 San Francisco, CA 94111-3821  
 Telephone: (415) 844-9944  
 Facsimile: (415) 844-9922

*Attorneys for Defendants*